IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA,	:	
	:	
v.	:	CASE NO.: 1:18-CR-042-1 (LAG)
	:	
THYRONE JONES,	:	
	:	
Defendant.	:	
	:	

ORDER

Before the Court is Defendant Thyrone Jones's Motion to Suppress (Motion) (Doc. 65).[1] Therein, Defendant seeks the suppression of all evidence seized in the search of his home on July 20, 2018, and all evidence derived from the results of that search. (*Id.* at 1.) He also requests a *Franks* hearing. (*Id.* at 7.) Defendant alleges that the affidavit filed in support of the search warrant did not contain sufficient probable cause, that the affidavit was based on stale information, and that the affiant deliberately omitted material information and thereby misled the issuing magistrate judge. (*Id.* at 2–7.) For the reasons stated below, the Motion (Doc. 65) is **DENIED**.

DISCUSSION

The Fourth Amendment prohibits unreasonable searches and seizures. *See* U.S. Const. Amend. IV. To ensure that search warrants do not violate this prohibition, the issuing judge must determine that there is probable cause to issue the warrant. *See United States v. Miller*, 24 F.3d 1357, 1361 (11th Cir. 1994). The issuing judge's duty is "simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates,* 462 U.S. 213, 238 (1983). Thus, "where

[1] The Court notes that this Motion is untimely. The Court's standard pretrial order requires that all motions be filed at least fourteen days prior to the pretrial conference. (Doc. 13 at 4.) Defendant Jones's counsel made this Motion orally at the pretrial conference on March 12, 2019. (*See* Doc. 64 at 2.) The Court granted Defendant's counsel leave to file a written motion to suppress by 9:00 a.m. on March 13, 2019. This Motion was filed by that deadline. (*See* Docket.)

[the] circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner." *United States v. Ventresca*, 380 U.S. 102, 109 (1965). Furthermore, there is "a presumption of validity with respect to the affidavit supporting the search warrant." *Franks v. Delaware*, 438 U.S. 154, 171 (1978). And because this presumption encourages law enforcement to seek warrants, and because the issuing judge is charged with being a neutral reviewer, a judge's "determination of probable cause should be paid great deference by the reviewing courts." *United States v. Leon*, 468 U.S. 897, 914 (1984).

Finally, "[w]here a search is conducted under the authority of a warrant, the defendant challenging the search carries the burden of showing the warrant to be invalid." *United States v. Osborne*, 630 F.2d 374, 377 (5th Cir. 1980) (citation omitted).[2] To suppress evidence based on alleged misrepresentations or omissions in a search warrant affidavit, "a defendant must make a substantial preliminary showing that the affiant made false statements, either intentionally or with reckless disregard for the truth, pointing specifically to the portions of the affidavit claimed to be false, and that the false statements were necessary to the finding of probable cause." *United States v. Kapordelis*, 569 F.3d 1291, 1309 (11th Cir. 2009) (citing *Franks*, 438 U.S. 154, 171). Here, Defendant has not done so. Moreover, even if the warrant affidavit contains objectionable material, if the material can be set aside and there still remains sufficient content to support a finding of probable cause, the Court must uphold the warrant and deny suppression or a *Franks* hearing. *Franks*, 438 U.S. at 171–72.

Here, all three of Defendant's arguments challenging the search warrant and affidavit fail. First, the Court finds, upon *de novo* review of the affidavit, that the affidavit established probable cause that evidence of a crime would be found at Defendant's residence. The affidavit states that, on numerous occasions, officers gave a confidential informant (CI) official funds and that the CI bought drugs from Defendant with those funds. (Doc. 65 at 3.) Furthermore, according to the affidavit, Defendant was observed returning to his residence

[2] Decisions of the former Fifth Circuit handed down prior to October 1, 1981 are binding precedent on the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

immediately after a transaction. (*Id.* at 3.) The affiant also details his own training and experience, his experience with the CI, and why the CI is reliable. (*Id.* at 2.) Taken as a whole, the affidavit is sufficient to show "a fair probability that contraband or evidence of a crime"—namely, illegal drug transaction—would be found in Defendant's residence. *Gates,* 462 U.S. at 238.

Defendant's argument that the affiant omitted material information from the affidavit and misled the magistrate also fails. "[I]ntentional or reckless omissions will invalidate a warrant only if inclusion of the omitted facts would have prevented a finding of probable cause." *Kapordelis*, 569 F.3d at 1309 (citing *Madiwale v. Savaiko*, 117 F.3d 1321, 1327 (11th Cir. 1997)). As explained above, the affidavit was sufficient to establish probable cause. Furthermore, Defendant has not made a substantial showing that any alleged omitted statements operated to mislead the magistrate or that their inclusion would have changed the finding of probable cause.

Third, Defendant's argument that probable cause was lacking because the affidavit was based on the affiant's "mostly stale investigation" also fails. In reviewing a staleness challenge, a Court should consider how recently information was obtained, the nature of the crime, and the habits of the accused, among other factors. *United States v. Harris*, 20 F.3d 445, 450 (11th Cir. 1994). If the affidavit updates, substantiates, or corroborates the stale information, its inclusion does not destroy probable cause. *Id.* Here, Defendant points to the fact that—of the seven alleged drug transactions between the CI and Defendant, six occurred between February and May 2018, but only one occurred in July (six days before the affidavit was sworn out). (Doc. 65 at 4–5.) These instances show a pattern of activity that did not end in the spring of 2018—in other words, the information about the first six transactions was updated by the July transaction. Accordingly, the affidavit was not stale, and suppression is not warranted on this ground.

CONCLUSION

For the reasons stated above, Defendant's Motion to Suppress (Doc. 65) and his request for a *Franks* hearing is **DENIED**.

SO ORDERED, this 13th day of March, 2019.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT